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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,345	10/28/2003	Neil Marcotte	100024.519939	5610

7590 03/24/2005

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EXAMINER

JULES, FRANTZ F

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,345

Applicant(s)

MARCOTTE ET AL.

Examiner

Frantz F. Jules

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/28/2003.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over White Jr. in view of Whiston et al (US 2003/0172837 A1).

Claims 1-11

White Jr. discloses a rail car mover apparatus for a loader vehicle, the loader vehicle comprising ground tires spaced to roll along a pair of railroad rails, a drive to rotate the ground tires, loader arms (24) extending forward of the loader vehicle, and a tool attachment mechanism (22) at a lower front portion of the loader arms adapted for attachment to a tool such that the tool can be raised and lowered by the loader arms, the apparatus comprising a front wheel bracket adapted for attachment to a front end of the loader vehicle, a pair of front rail wheels (30) spaced to engage the pair of railroad rails and rotatably attached to a front end of the loader vehicle such that the front rail wheels can move up and down in response to forces exerted by a front actuator, a pair of rear rail wheels (32) spaced to engage the pair of railroad rails and rotatably attached to a rear end of the loader vehicle; a coupler adapter (22) attached at a rear end thereof to a front portion of the loader arms and adapted at a front end thereof for coupling to a rail car hitch (18).

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White Jr disclose all of the features as disclosed above but does not disclose a rail car mover loader comprising rear rail wheels can move up and down in response to forces exerted by a rear actuator. The general concept of providing rear rail wheels can move up and down in response to forces exerted by a rear actuator in a rail car mover is well known in the art as illustrated by Whiston et al which disclose the teaching of rear rail wheels can move up and down in response to forces exerted by a rear hydraulic actuators in a vehicle loader. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify White Jr to include the use of rear rail wheels can move up and down in response to forces exerted by a rear hydraulic actuators as taught by Whiston et al in order to improve the stability of the rail car mover loader thereby allowing for carrying higher loading.

3. Claims 12-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over White Jr. in view of Whiston et al (US 2003/0172837 A1).

Claims 12-25

White Jr. discloses a rail car mover loader vehicle comprising ground tires spaced to roll along a pair of railroad rails; a drive to rotate the ground tires, loader arms (24) extending forward of the loader vehicle and operative to move up and down; a pair of front rail wheels (30) spaced to engage the pair of railroad rails and rotatably attached to a front end of the loader vehicle such that the front rail wheels can move up and down in response to forces exerted by a front actuator, a pair of rear rail wheels (32) spaced to engage the pair of railroad rails and rotatably attached to a rear end of the

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loader vehicle; a coupler adapter (22) attached at a rear end thereof to a front portion of the loader arms and adapted at a front end thereof for coupling to a rail car hitch (18).

White Jr disclose all of the features as disclosed above but does not disclose a rail car mover loader comprising rear rail wheels can move up and down in response to forces exerted by a rear actuator. The general concept of providing rear rail wheels can move up and down in response to forces exerted by a rear actuator in a rail car mover is well known in the art as illustrated by Whiston et al which disclose the teaching of rear rail wheels can move up and down in response to forces exerted by a rear hydraulic actuators in a vehicle loader. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify White Jr to include the use of rear rail wheels can move up and down in response to forces exerted by a rear hydraulic actuators as taught by Whiston et al in order to improve the stability of the rail car mover loader thereby allowing for carrying higher loading.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Hendron, Halischuk, and Johnson et al are cited to show related vehicle loader comprising coupler device.

Jackson et al and Johnson Sr are cited to show related rail road vehicle loader comprising front and rear hydraulic lift device.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-

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8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz F. Jules
Primary Examiner
Art Unit 3617

FFJ

March 18, 2005

FRANTZ F. JULES
PRIMARY EXAMINER
